

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:)	
)	Bankruptcy No. 04-60905 - DDO
David J. Larson and)	
Dawn M. Larson,)	
)	Chapter 13
)	
Debtor.)	

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

To: The Debtor and his Counsel and other entities specified in Local Rule 9013-3(a).

1. State Bank & Trust, by and through its counsel, moves the Court for the relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 1:00 p.m., on September 28, 2004, Courtroom No. 2, United States Bankruptcy Court, 205 Post Office Building, 118 South Mill Street, Fergus Falls, MN 56537.

3. Any response to this motion must be filed and delivered no later than September 23, 2004, on all parties required to be served pursuant to Local Rule 9013-3, which is three days before the time set for this hearing, (excluding Saturdays, Sundays, and holidays) or filed and served by mail no later than September 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition

commencing this Chapter 13 case was filed on July 30, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. § 362 (d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 – 9019-1(d). Movant Requests Relief with respect to personal property of the debtor subject to a lien.

6. On June 27, 2002, David Larson executed and delivered to Ward Muscatell Auto a Retail Installment Contract and Security Agreement in the amount of \$17,789.47, payable in monthly installments thereafter beginning on August 11, 2002 with all remaining principal and interest due at maturity on July 11, 2006. This Retail Installment Contract and Security Agreement was subsequently assigned to State Bank & Trust. To secure the payment, a security interest was granted in a 2000 Dodge Ram Pickup, VIN: 1B7HF132YJ115318. A copy of the Installment Contract and Security Agreement, and Proof of Perfection are attached hereto.

7. The total amount due and owing as of August 27, 2004 was \$13,253.12. Debtors are in default of payment and performance of his obligations under said loan documents.

8. Debtors have little or no equity in the property. The Debtors have scheduled the value of the vehicle at \$12,000.00. The Debtors plan does not provide for payment of the State Bank & Trust's secured debt. Moreover, it is believed that Debtors intend on surrendering said collateral.

9. By reason of the foregoing, good cause exists, including lack of adequate protection, to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law as State Bank & Trust has a protected interest in the property.

10. Bank has and will incur legal fees and costs to protect and enforce its rights in the property, which fees and costs the debtors are liable to Bank under the terms of the loan documents.

11. This is an attempt to collect a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, State Bank & Trust moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.
2. For such other and further relief as the Court finds just and proper.

Dated this 27th day of August, 2004.

/e/ Kyle L. Carlson
Kyle L. Carlson
ANDERSON & BOTTRELL
State Bank Center, Suite 302
3100 13th Avenue Southwest
P.O. Box 10247
Fargo, North Dakota 58106-0247
(701) 235-3300
MN License #028483X
Attorneys for State Bank & Trust

VERIFICATION

I, Shelly Ritterman, of State Bank & Trust, the moving party, named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 27th day of April, 2004.

/e/ Shelly Ritterman
Shelly Ritterman

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date 06/27/2002		Ward Muscatell Auto. Grp. Inc. 904 CENTER AVE MOOREHEAD, MN 56560 We and our Seller above, its successors and assigns.	Buyer DAVID LARSON #911893 1218 14 ST N MOOREHEAD, MN 56560 You and our Buyer above, and guarantor, jointly and individually.
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SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year 2000 Make DODGE Model RAM PICKUP	VIN 187HF13Z2YJ116318 Lic. No./Year 7-02 <input type="checkbox"/> New <input checked="" type="checkbox"/> Used	Other:
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Description of Trade-In: **N/A**

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 17789.47 plus finance charges accruing on the unpaid balance at the rate of 10.25% per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

LOAN ADMINISTRATION FEE: You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be ☐ paid in cash. ☐ paid pro rata over the contract term. ☐ withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
10.25%	\$ 4056.77	\$ 17789.47	\$ 21846.24	\$ 4243.00

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
48	455.13	MONTHLY BEGINNING 08/11/2002

Security: You are giving a security interest in the Motor Vehicle purchased.
☐ Late Charge: If a payment is more than 10 days late, you will be charged \$5.72 OR 5% OF PAYMENT WHICHEVER IS GREATER. ☐ 9% amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.
☐ If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured ☐ Single ☐ Joint Prem. \$ N/A term N/A

Credit Disability: Insured ☐ Single ☐ Joint Prem. \$ N/A term N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer David Larson DOB DOB

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. If you get insurance from or through us you will pay \$ N/A of coverage.

This premium is calculated as follows:
☐ \$ N/A Deductible, Collision Coverage \$ N/A
☐ \$ N/A Deductible, Comprehensive/Cov. \$ N/A
☐ Fire-Theft and Combined Additional Coverage \$ N/A
☐ \$ N/A

Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

MOTOR VEHICLE SERVICE CONTRACT: With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover WESTERN NATIONAL APC. This Service Contract will be in effect for 36 months or 36000 miles.

ASSIGNMENT: The Contract and Security Agreement is assigned to STATE BANK OF FARGO. This assignment is made ☐ under the terms of a separate agreement. ☒ under the terms of the ASSIGNMENT BY SELLER on page 2. This assignment is made with recourse. David Larson Date 06/27/2002

Buyer David Larson Date 06/27/2002

Signature David Larson Date _____

Signature David Larson Date _____

ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services if you buy them over time. You agreed to purchase the item over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect, and you do not agree to pay, any finance charge or fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, you have a right to a refund of the excess charge. If you agree, or if you do not make a timely request for a refund, we will apply the refund amount first to reduce the principal balance, and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

This Contract is governed by the laws of Minnesota and the United States of America.

NAME AND LOCATION: Your name and address indicated on page 1 are your exact legal name and your principal residence. You will provide us with as least 30 days notice prior to changing your name or principal residence.

PREPAYMENT: You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance, but no refund will be paid if the amount of the refund would be less than \$5.00.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving us a security interest in the Property, you represent and agree to the following:

- A. Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or affixed to the Vehicle.
- B. You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
- C. The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
- D. You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.
- E. You will not attempt to sell the Property (unless it is properly identified inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
- F. You will pay all taxes and assessments on the Property as they become due.
- G. You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

DEFAULT: You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- A. You fail to perform any obligation that you have undertaken in this Contract.
- B. We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.

If you default, you agree to pay our costs for collecting amounts owing, including court costs, attorneys' fees, and fees for repossession, repair, storage and sale of the Property securing this Contract. If this Contract is subject to Minn. Stat. § 168.71, the amount of our attorneys' fees you must pay will not exceed 15% of the amount due and payable under this Contract.

If an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

- A. We may require you to immediately pay us, less any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- B. We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
- C. We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
- D. We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward what you owe us.

E. Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not give up our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

RETURNED CHECK CHARGE: You agree to pay a service charge for each returned check or returned automatic payment request. The amount of the service charge will be \$30.00.

INSURANCE: You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee on any such policy. (Generally, loss payee is the one to be paid the policy benefits in case of loss or damage to the property.) In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. If the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. We will notify you if we do so. This insurance may include coverages not required of you. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full. However, if this Contract is assigned, and the Assignee is not a financial institution as defined by Minn. Stat. § 47.55, this amount will earn finance charges from the date paid at 8% per year.

OBLIGATIONS INDEPENDENT: Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- A. You must pay this Contract even if someone else has also signed it.
- B. We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
- C. We may release any security and you will still be obligated to pay the Contract.
- D. If we give up any of our rights, it will not affect your duty to pay this Contract.
- E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WAIVER: To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; (3) give notice that we intend to make, or are making, this Contract immediately due; or, (4) obtain official certification of nonpayments.

THIRD PARTY AGREEMENT

By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

Signature _____ Date _____

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS THEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

ASSIGNMENT BY SELLER

Seller sells and assigns this Retail Installment Contract and Security Agreement, (Contract), to the Assignee, its successors and assigns, including all its rights, title and interest in this Contract, and any guarantee executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE AGREEMENT: If this Assignment is made "under the terms of a separate agreement" as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.)

Seller warrants:

- A. The Contract represents a sale by Seller to Buyer on a time price basis and not on a cash basis.
- B. The statements contained in this Contract are true and correct.
- C. The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.
- D. This sale was completed in accordance with all applicable federal and state laws and regulations.
- E. This Contract is valid and enforceable in accordance with its terms.
- F. The names and signatures on this Contract are not forged, fictitious or assumed, and are true and correct.
- G. This Contract is related to the Seller's use of all its assets. It is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
- H. A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.
- I. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
- J. Seller has or will perfect a security interest in the Property in favor of the Assignee.

If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorneys' fees.

Seller will indemnify Assignee for any loss sustained by it because of judicial set-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

Seller waives notice of the acceptance of this Assignment, notice of non payment or non performance and notice of any other remedies available to Assignee.

Assignee may, without notice to Seller, and without affecting the liability of Seller under this Assignment, compound or release any rights against, and grant extensions of time for payment to be made, to Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE.

WITH RECOURSE: If this Assignment is made "with recourse" as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
 DRIVER & VEHICLE SERVICES DIVISION
 445 MINNESOTA ST., ST. PAUL, MN 55101
 CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS
LARSON DAVID JOHN
1218 14TH ST N
MOORHEAD MN 56560

First Class
 U.S. Postage
PAID
 Permit No. 171
 St. Paul, MN

DCF975

1ST SECURED PARTY

LIEN HOLDER

STATE BANK OF FARGO
 PO BOX 10877
 FARGO ND 58106-0877

00	DODG	9CRPC	D2U70P6884
Year	Make	Model	Title NR
187HF13Z2YJ115318	06/29/02	NO	
VN	Security Date	Rebuilt	

RETAIN THIS DOCUMENT - See reverse
 side of this form for removing this lien.

8-5-03

DL911893 2014692

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:)	
)	Bankruptcy No. 04-60905 - DDO
David J. Larson and)	
Dawn M. Larson,)	
)	Chapter 13
)	
Debtor.)	

MEMORANDUM OF LAW

State Bank & Trust, submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

On June 27, 2002, David Larson executed and delivered to Ward Muscatell Auto a Retail Installment Contract and Security Agreement in the amount of \$17,789.47, payable in monthly installments thereafter beginning on August 11, 2002 with all remaining principal and interest due at maturity on July 11, 2006. This Retail Installment Contract and Security Agreement was subsequently assigned to State Bank & Trust. To secure the payment, a security interest was granted in a 2000 Dodge Ram Pickup, VIN: 1B7HF132YJ115318. The total amount due and owing as of August 27, 2004 was \$13,253.12. Debtors are in default of payment and performance of his obligations under said loan documents. Debtors have little or no equity in the property. The Debtors have scheduled the value of the vehicle at \$12,000.00. The Debtors plan does not provide for payment of the State Bank & Trust's secured debt. Moreover, it is believed that Debtors intend on surrendering said collateral.

ARGUMENT

Under Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor “for cause, including the lack of adequate protection of an interest in property of such creditor.” 11 U.S.C. Sec. 362(d)(1). Adequate protection is not defined in the Bankruptcy Code. “While the concept of adequate protection is complex, its application is intended to be flexible and molded to the needs of an individual case so that the purposes of bankruptcy will be accomplished.” In Re: All-Way Services, Inc., 73 B.R. 556, 565 (Bankr.E.D.Wisc. 1987). Each case may be decided on a case by case basis with attention given to the particular facts of the case. H.R.Rep.No. 95-595, 95th Cong., 2d Sess. 339; In Re: Johnson, 90 B.R. 973, 978 (Bankr.D.Minn. 1988). Adequate protection is derived from the fifth amendment protection of property interests of both the debtor and creditor and is meant to reconcile the competing interests of the debtor and the creditor. Federal Land Bank v. Carson, (In Re: Carson), 34 B.R. 502, 505 (D.Kan. 1983).

There are a number of factors to be considered in determining whether a secured creditor’s interest is adequately protected, such as equity; necessity of property to an effective reorganization; ability to pay interest or give replacement liens or indubitable equivalent; and the debtor’s care in keeping property insured and repaired. In Re: Johnson, 90 B.R. at 979.

In this case, the Debtors plan does not provide for payment of the State Bank & Trust’s secured debt. Moreover, the debtors have failed to make the payments required by the terms of the note and the debtors have little or no equity in the property. Finally, Bank has incurred and will incur legal fees and costs in connection with the protection and enforcement of its rights in the property pursuant to the note. Such circumstances constitute cause, within the meaning of Section 362(d)(1) of the Bankruptcy Code, justifying relief from the automatic stay. See In Re:

Brown, 70 B.R. 10, 12 (Bankr.S.D.Ohio 1986); In Re: Chapman, 23 B.R. 176, 178 (Bankr.N.D.Ill. 1982).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362(d)(2). See, In Re Gellert, 55 B.R. 970 (Bkrcty. D.N.H. 1983). In the present case, the Debtors are in default of payment and performance of their obligations under the loan documents. The debtors have failed to make the payments required by the terms of the note and the debtors have little or no equity in the property

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its security interest on the property.

Dated this 27th day of August, 2004

/s/ Kyle L. Carlson

Kyle L. Carlson
ANDERSON & BOTTRELL
State Bank Center, Suite 302
3100 13th Avenue Southwest
P.O. Box 10247
Fargo, North Dakota 58106-0247
(701) 235-3300
MN License #028483X
Attorneys for State Bank & Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:)	
)	Bankruptcy No. 04-60905 - DDO
David J. Larson and)	
Dawn M. Larson,)	
)	Chapter 13
)	
Debtor.)	

AFFIDAVIT OF SERVICE BY MAIL

The undersigned, being first sworn, says upon her oath that a copy of each of the following:

Notice of Hearing and Motion for Relief from Stay
Memorandum of Law
Order for Relief from Stay

was caused to be deposited in the United States Mail, first class postage paid, addressed to the following:

David Larson
14999 Walnut Lane
Miltona, MN 56354

Dawn Larson
14999 Walnut Lane
Miltona, MN 56354

U.S. Trustee's Office
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Logan Moore
Attorney at Law
1118 Broadway
Alexandria, MN 56308

Michael Farrell
P.O. Box 519
Barnesville, MN 56514

on the 27th day of August, 2004.

Dated this 27th day of August, 2004.

/e/ Alisha R. Thielke
Alisha R. Thielke

Subscribed and sworn to before me this 27th day of August, 2004.

/e/ Jodi M. Nelson
Notary Public
My Commission Expires: 8/10/06

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

David J. Larson and
Dawn M. Larson,

Debtor.

)
) Bankruptcy No. 04-60905 - DDO
)
)
) Chapter 13
)
)

DECLARATION RE: ELECTRONIC FILING

Title of Document to be Electronically Filed: Motion for Relief From Stay

Filing Date: August 27, 2004

I, Shelly Ritterman, declare under the penalty of perjury, that I am the person who signed the above named document, that the information provided in the document is true and correct, that I consent to the document being electronically filed with the clerk of the United States Bankruptcy Court and that I understand that this Declaration Re: Electronic Filing is to be filed with the clerk no later than five days after the above named document has been electronically filed.

Executed on August 27, 2004

Signed: Shelly Ritterman, A/P

Name and Address of Subscriber:

Shelly Ritterman
State Bank & Trust
State Bank Center
3100 13th Avenue SW
Fargo, ND 58103
Phone: 701-298-1526

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:)	
)	Bankruptcy No. 04-60905 - DDO
David J. Larson and)	
Dawn M. Larson,)	
)	Chapter 13
)	
Debtor.)	

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing to be heard on the Motion of State Bank & Trust, a creditor in the proceeding. The Court having jurisdiction, due notice having been given, and the Court having been fully advised,

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow State Bank & Trust to pursue its state law remedies against Debtors as to the 2000 Dodge Ram Pickup, VIN: 1B7HF132YJ115318, that it has a security interest in.

NOTWITHSTANDING Federal Rule of Bankruptcy procedure 4001(a)(3), this order is effective immediately.

Dated:

BY THE COURT:

Judge of Bankruptcy Court